

STATE OF MICHIGAN  
COURT OF APPEALS

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GHALEB NAJIB HADDAD, Personal  
Representative of the Estate of SHIBLI JAMIL  
HADDAD, Deceased,

Plaintiff-Appellant,

v

WALEED MAMMO, D.D.S.,

Defendant-Appellee.

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UNPUBLISHED  
February 27, 2007

No. 266646  
Macomb Circuit Court  
LC No. 2004-001381-NH

Before: O’Connell, P.J., and Saad and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court opinion and order granting defendant summary disposition pursuant to MCR 2.116(C)(7) and (10). We affirm. This case arose when defendant, a dentist, allegedly told the decedent to abstain from a blood thinning medication before defendant pulled out an aching tooth. The decedent’s family doctor warned the decedent not to undergo the extraction, but the decedent ignored his doctor’s advice. He stopped taking his medication and suffered a fatal stroke the day after the extraction. Defendant denied that he performed the extraction.

Plaintiff first contends that the circuit court erred by granting defendant summary disposition with respect to the fraudulent concealment issue. We disagree. We review de novo a trial court’s decision to grant summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). The deposition testimony of plaintiff and several other members of the decedent’s family shows that by the time of the decedent’s funeral in May 1999, the family knew that (1) defendant had removed the decedent’s tooth on May 8, 1999, (2) defendant had instructed the decedent to stop taking Coumadin, against the advice of the decedent’s regular physician, and (3) on May 9, 1999, the decedent suffered a fatal stroke. Consequently, plaintiff almost immediately had reason to know that defendant had treated the decedent and that his questionable treatment probably played a role in causing the decedent’s death. See *Craig v Oakwood Hosp*, 471 Mich 67, 86; 684 NW2d 296 (2004); *Doe v Roman Catholic Archbishop of the Archdiocese of Detroit*, 264 Mich App 632, 643; 692 NW2d 398 (2004). Moreover, by January 2000, plaintiff and the decedent’s other family members undisputedly knew about the facts supporting a potential negligence claim against defendant and had hired an attorney to investigate further the link between defendant’s treatment and the decedent’s demise. *Doe, supra*. Because plaintiff did not file the complaint until April 2004, the fraudulent-concealment

rule's two-year grace period does not preserve this claim from summary disposition. MCL 600.5855.

Plaintiff next argues that the circuit court erred by retroactively applying *Waltz v Wyse*, 469 Mich 642; 677 NW2d 813 (2004), to this case. A medical malpractice plaintiff generally has two years from the date the cause of action accrued in which to file suit. MCL 600.5805(6). A malpractice claim against a dentist "accrues at the time of the act or omission that is the basis for the claim of medical malpractice." MCL 600.5838a(1). Because the alleged negligence of defendant occurred on May 8, 1999, the date he extracted the decedent's tooth, the malpractice claim in this case accrued on May 8, 1999, and the limitations period expired on May 8, 2001. However, plaintiff was appointed as personal representative on November 5, 2001, so the wrongful death saving period gave him until November 5, 2003, to commence this action. MCL 600.5852. Although plaintiff provided defendant with a notice of his intent to sue on October 27, 2003, this notice did not toll the wrongful death saving period as it would have tolled the statute of limitations. *Waltz, supra* at 648-651, 655. Instead, notices of intent to sue only toll statutes of limitations, and the limitations period in this case had already expired. *Id.* Here, plaintiff failed to file suit by November 5, 2003, so the trial court correctly dismissed the case as time-barred. MCR 2.116(C)(7).

Plaintiff's remaining challenges to *Waltz* lack merit. We concluded in *Mullins v St Joseph Mercy Hosp*, 271 Mich App 503, 509; 722 NW2d 666 (2006), that the Supreme Court's holding in *Waltz* "applies retroactively in all cases." More recently, a special conflict panel in *Ward v Siano*, \_\_\_ Mich App \_\_\_, slip op at 2; \_\_\_ NW2d \_\_\_ (Docket No. 265599, issued November 14, 2006), rejected the proposition that "a wrongful death plaintiff may rely upon equitable tolling to escape the retroactive effect of our Supreme Court's decision in *Waltz* . . . ." The Court in *Ward* held that "judicial tolling should not operate to relieve wrongful death plaintiffs from complying with *Waltz*'s time restraints . . . ." *Id.* at 7. Finally, *Waltz* did not shorten any available time limits, but merely held that the Legislature only intended a plaintiff's provision of statutory notice to toll the statute of limitations, not the wrongful-death saving period. *Waltz, supra* at 652 n 14. Therefore, plaintiff's due process argument is unfounded. See *Farley v Advanced Cardiovascular Health Specialists, PC*, 266 Mich App 566, 576 n 27; 703 NW2d 115 (2005).

Affirmed.

/s/ Henry William Saad  
/s/ Michael J. Talbot